

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

MARCEL COOK,

Plaintiff,

v.

HOMER BRYSON,

Defendant.

CIVIL ACTION NO.: 6:15-cv-46

ORDER

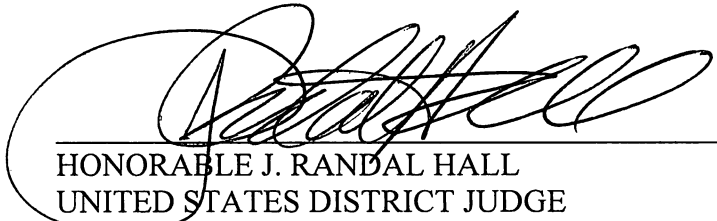
After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, (doc. 9), to which no Objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge, as supplemented herein, is adopted as the opinion of the Court.

The Magistrate Judge conducted an initial review of Plaintiff's Complaint pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915, and recommended that the Complaint be dismissed for failure to state a claim. After the issuance of the Report and Recommendation, Plaintiff filed a Motion to Voluntarily Dismiss without prejudice. (Doc. 10.) Federal Rule of Civil Procedure 41(a) permits a plaintiff to unilaterally dismiss a case before the opposing party serves an answer or a motion for summary judgment. However, a plaintiff's right to dismiss is "[s]ubject to ... any applicable federal statute[.]" Fed. R. Civ. P. 41(a). Consequently, Plaintiff cannot avoid the operation of the PLRA by stipulating to dismissal of his action after the issuance of the Report and Recommendation. See Wilson v. Freesemann, No. CV407-059, 2007 WL 2083827, at *1 (S.D. Ga. July 13, 2007) ("28 U.S.C. § 1915(a) prevents a

prisoner from avoiding a 28 U.S.C. § 1915(g) ‘strike’ merely by exploiting Rule 41(a) in the face of an adverse Report and Recommendation.”). Further, the Court cautioned Plaintiff early in this litigation regarding the requirements of the PLRA. (Doc. 4.) The Court afforded Plaintiff an opportunity to voluntarily dismiss his Complaint prior to submitting the forms enclosed with that Order, thereby avoiding payment of the filing fee or receiving another “strike” under § 1915(g). Id. Plaintiff did not avail himself of that opportunity.

Consequently, the Court **DENIES** Plaintiff’s Motion for Voluntary Dismissal (doc. 10), **DISMISSES** this case for failure to state a claim, and **DENIES** Plaintiff leave to proceed *in forma pauperis* on appeal. The Clerk of Court is hereby authorized and directed to enter an appropriate Judgment of Dismissal.

SO ORDERED, this 2nd day of February, 2016.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA